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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

JUAN CAAMAL,

Plaintiff,

v.

**TRG CA EMPLOYMENT, INC., a
corporation; TIBURON LODGE CA
HOTEL MANAGER, LLC, a limited
liability company; and DOES 1-100,
inclusive,**

Defendants.

Case No.: CIV-2001374

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR FEES AND COSTS OF CLASS COUNSEL,
CLASS REPRESENTATIVE ENHANCEMENT
AWARD TO CLASS REPRESENTATIVE, AND
COSTS OF ADMINISTRATION**

Date: April 11, 2024

Time: 9:00 a.m.

Courtroom: H

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1 **I. INTRODUCTION**

2 Plaintiff Juan Caamal (“Plaintiff”) hereby moves the Court for an award of attorneys’ fees in
3 the amount \$69,124 (i.e., one-third of the \$207,372.39 Maximum Settlement Amount¹), \$8,679.67 in
4 litigation costs, a Class Representative Enhancement Award of \$5,000, and the costs of the Settlement
5 Administrator in the amount of \$9,000.² As set forth below, the amounts sought are consistent with
6 recent awards in similar wage and hour class action settlements and fall well within the range of
7 reasonableness under the facts and circumstances of this case. Further, and perhaps most importantly,
8 *none of the 98 Class Members have opted out of the Settlement, and none have objected to the*
9 *requested awards since receiving the Court-Approved Class Notice.*

10 The attorneys’ fee award should be approved under the common fund methodology because it
11 serves to spread the attorneys’ fees equally among all the beneficiaries of the fund, mimics the
12 marketplace had the Class Members each individually retained Class Counsel on a contingency basis,
13 and encourages competent counsel to take on complex contingency cases such as this, and to seek an
14 early settlement and avoid unnecessarily prolonging litigation. The sought fee is appropriate here
15 because Class Counsel have (1) obtained a significant monetary relief worth more than \$95,748.39 to
16 the Class (even after subtracting the costs of administration and the fees and costs of Class Counsel, as
17 well as the PAGA payments to the PAGA Members and the Labor and Workforce Development
18 Agency); (2) worked diligently and efficiently (*nearly 237 hours, over nearly four years*) despite
19 considerable risks faced in prosecuting this litigation; and (3) carried the financial burden of
20 representing Plaintiff and the Class on a contingency basis. The requested reimbursement of
21 \$8,679.67 in litigation costs is also reasonable and appropriate.
22
23
24

25 ¹ As briefed in the Motion for Final Approval, Tiburon Lodge’s “escalator” clause has been invoked, such that its
26 contractual contribution to the Maximum Settlement Amount has increased by more than **22 percent**. (See Declaration
27 of Gillian McCreedy, ¶ 6.) The Maximum Settlement Amount increased from \$185,000 to \$207,372.39. The
Settlement Agreement provides for attorney’s fees not to exceed \$61,667, **or** one-third of the Maximum Settlement
Amount. (Declaration of John P. Briscoe, Exhibit A, § 16.) For the reasons set forth herein, Class Counsel requests an
appropriate fee award of one-third of the Maximum Settlement Amount.

28 ² Capitalized terms herein shall have the same meaning as in the Settlement Agreement, a copy of which is attached
hereto as **Exhibit 1** to the Declaration of John P. Briscoe (“Briscoe Decl.”) filed concurrently herewith.

1 A Class Representative Enhancement Award to Plaintiff in the amount of \$5,000 is also
2 appropriate, given the considerable relief that is being afforded to the Class, and given Plaintiff's
3 indispensable role in securing that relief in a complex and protracted litigation.

4 Finally, the Settlement Administrator, Simpluris, should be paid its fee of \$9,000 (already
5 approved preliminarily by the Court) in connection with its administration of the Settlement, and
6 conducting exemplary work in this matter.

7 Accordingly, Plaintiff respectfully requests that the Court grant the Fee Motion and approve
8 the requested fees, costs, and payments set forth herein.

9 **II. FACTUAL AND PROCEDURAL BACKGROUND**

10 **A. Factual and Procedural History.**

11 On June 9, 2020, Class Counsel sent written notice to Defendants and the California Labor and
12 Workforce Development Agency ("LWDA"), alleging that, during Plaintiff's employment with
13 Defendant, he was not paid overtime at the correct rate of pay, had tips impermissibly taken by his
14 employer, was not paid sick leave at the correct rate, was not timely paid all wages, was not provided
15 with rest and meal periods or paid premiums, was not paid all wages due upon termination, and was not
16 furnished with accurate wage statements. (Briscoe Decl., Exhibit B.) The LWDA did not provide
17 written notice that it intended to investigate the alleged violations. (*Id.*, § 5.)

18 On June 16, 2020, Class Counsel filed this action in Marin County Superior Court as against
19 Defendants, on behalf of himself and all other California employees similarly situated. On September
20 23, 2020, Caamal filed a First Amended Class Action Complaint, adding a cause of action under the
21 Private Attorneys General Act ("PAGA", Lab. Code, § 2698 et seq.)

22 In July 2021, the California Supreme Court issued its ruling in the matter of *Ferra v. Loews*
23 *Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, clarifying that "premium" payments for non-compliant
24 rest and meal periods must be paid at the "regular rate of compensation", inclusive of commissions,
25 nondiscretionary bonuses, and other items of compensation. Accordingly, on September 1, 2021,
26 Plaintiff filed a Second Amended Complaint—this did not add any substantive claims but clarified that,
27 to the extent that rest/meal premiums were paid, they were not paid at the appropriate regular rate of
28 compensation (because they omitted the value of mandatory service charges).

Between September and October 2021, Defendants filed their respective Answers to the Second Amended Complaint, in which it denied the claims, causes of action and substantive allegations of the Second Amended Complaint, and asserted various affirmative defenses.

B. Investigation, Discovery, and Negotiations.

Prior to filing this action, counsel for Caamal conducted an extensive and exhaustive analysis of the claims to be asserted in this action, including closely scrutinizing Caamal's wage-and-hour records. In mid-2021, the Parties all agreed to attend private mediation with Lisa Klerman, Esq., a renowned mediator of employment class and representative actions. Prior to mediation, Defendants produced a sampling of wage-and-hour records and also extensive payroll spreadsheets and other documents; with this data and documents, Class Counsel was able to evaluate the size and scope of the class and the number of potential violations of multiple provisions of the Labor Code. Plaintiff's counsel estimated that the *maximum* exposure for unpaid wages (inclusive of rest/meal period premiums) and statutory penalties is in excess of \$415,000 (making this settlement amount a very substantial amount of that which might be recovered following likely years of additional litigation and a complex trial). (Briscoe Decl., §§ 7, 14-17.)

At the close of that mediation, it was agreed that the Parties would resolve all of the claims theretofore alleged in this action, for the Gross Settlement Sum of \$180,000 (with Tiburon Lodge contributing \$95,000 and TRG contributing \$85,000). After several months of clarifying the essential terms, Plaintiff and TRG executed a memorandum of understanding regarding the latter's contributions to the Gross Settlement Sum. Finalizing the Proposed Settlement with Tiburon Lodge, however, proved more contentious and protracted. Tiburon Lodge eventually asked that this Settlement included a waiver of claims for failure to reimburse for business expenses (see Lab. Code, § 2802), though such claims were not at issue. It was agreed that Tiburon Lodge would disclose information so that Class Counsel could evaluate such a claim. Class Counsel was provided with a declaration from Tiburon Lodge's general manager; said declaration generally demonstrated that the value of a § 2802 claim would be negligible. Thus, it was agreed that Tiburon Lodge would increase its payment to \$100,000, and that this Settlement would include a waiver of claims under Labor Code section 2802. Negotiations hit a further snag when Tiburon Lodge requested a waiver of claims for failure to pay minimum wage

1 also be included in the Proposed Settlement; this was on account of an errant reference in the First
2 Amended Complaint to Labor Code section 1197.1—a statute which provides for civil penalties for
3 failure to pay minimum wage. It was subsequently agreed that Plaintiff would file a Second Amended
4 Complaint, adding a claim for Failure to Reimburse for Business Expenses (as against Tiburon Lodge
5 only) and strike the reference to Labor Code section 1197.1. (Briscoe Decl., §§ 8-12.) ***To clarify: This***
6 **Settlement does not include a waiver of claims for failure to pay minimum wage, or any other**
7 **claim that is not set forth in the Third Amended Complaint.**

8 Ultimately—and following over a year of contentious and intensive negotiating over the
9 particulars—the Parties have to resolve, on behalf of the putative Class, all claims alleged in the Third
10 Amended Complaint and derivative claims related thereto arising from the facts alleged in the Third
11 Amended Complaint, from June 16, 2016 to September 15, 2022, including claims for underpayment of
12 overtime, underpayment of paid sick leave hours, failure to provide meal or rest periods or pay
13 premiums at the correct rate, underpayment of meal or rest period premiums, wage statement
14 violations, unfair business practices, and waiting time penalties arising from or related to such claims.
15 Additionally, the Proposed Settlement resolves claims for failure to reimburse for business expenses,
16 but only as against Tiburon Lodge.

17 **C. The Court Granted Preliminary Approval of the Settlement.**

18 This Court granted preliminary approval of the Settlement Agreement on October 18, 2023.
19 Having reviewed the settlement negotiations, the substantive terms of the Settlement Agreement, and
20 the papers submitted in conjunction with Plaintiffs’ Motion for Preliminary Approval, the Court
21 found: (1) that the Settlement Agreement appeared to be within the range of reasonableness of
22 settlement which could ultimately be given final approval by this Court; (2) that it appeared to the
23 Court that the settlement amount is fair and reasonable to Class Members when balanced against the
24 probable outcome of further litigation, liability and damages issues; (3) that it further appeared that
25 significant investigation and research has been conducted and that counsel for the parties at this time
26 are able to reasonably evaluate substantial costs, delay and risks that would be presented by the
27 further prosecution of the litigation; and (4) that it further appeared that the proposed Settlement has
28 been reached as the result of intensive, serious and non-collusive, arms-length negotiations.

Thus, the Court (1) preliminarily and conditionally certified the Class as requested; (2) appointed Simpluris as the Claims Administrator (and their administration costs of up to \$9,000), (3) appointed Mayall Hurley P.C. as Class Counsel; (4) approved, and directed the mailing of, the submitted Notice of Pendency (“Class Notice”) in accordance with the terms of the Class Action Settlement and Release (“Settlement Agreement”); and (5) preliminarily approved the requested awards of attorney’s fees and costs to Class Counsel, as well as the requested Class Representative Incentive Payment to Plaintiff. (Order Granting Preliminary Approval of Class Action Settlement [“Order Granting Preliminary Approval”].) Finally, the Court scheduled the Final Approval Hearing to determine fairness, reasonableness and adequacy of the Settlement as well as the Fee Motion.

D. The Distribution of the Notice Has Resulted in a Positive Reaction By the Class.

On January 19, 2024, Class Notices were mailed to all 98 Class Members via First Class mail, in English and Spanish. (Declaration of Gillian McCreedy Regarding Settlement Notice Administration [“Admin. Decl.”], ¶ 5, Exhibit A.) In accordance with the Court’s instructions, the Class Notice informed Class Members about the terms of the Settlement, including the fact that Plaintiff would request: (1) an award of attorney’s fees of \$61,667 to be paid from the Maximum Settlement Amount, (2) reimbursement of up to \$10,000 in litigation costs, (3) fees and costs of the Settlement Administrator in the amount of \$9,000, and (4) a Class Representative Incentive Payment to Plaintiff in the amount of \$5,000. (*Id.*, Exhibit A.) Following the notice period, *none of the Class Members have opted out or objected to the Settlement, and none have disputed their number of weeks worked for purposes of calculating their settlement awards.* (*Id.*, ¶¶ 11-13.) The *unanimously positive* reaction by the Class is an unambiguous indication of its approval of the Settlement and the terms thereof. Now that the notice period has closed and resulted in an extremely positive response from the Class Members, Plaintiff respectfully requests final approval of the Settlement and that the Class be certified finally.

1 **III. THE REQUESTED ATTORNEY’S FEES AND COSTS SHOULD BE APPROVED**

2 **A. The Court Should Apply the Common Fund Methodology to Award Class Counsel’s**
3 **Fees Under the Settlement.**

4 Attorneys’ fees are expressly authorized by the provisions of the Labor Code under which this
5 action was brought. (See Lab. Code, §§ 218.5, 226(e)(1), 233(e), 1194.) Furthermore, “[A] litigant or
6 a lawyer who recovers a common fund for the benefit of persons other than himself or his client is
7 entitled to reasonable attorneys’ fees from the fund as a whole.” (*Boeing Co. v. Van Gemert* (1980)
8 444 U.S. 472, 478.) Recently, the California Supreme Court clarified its stance on common fund
9 cases, ruling –

10 “We join the overwhelming majority of federal and state courts in holding that
11 when class action litigation established a monetary fund for the benefit of the
12 class members, and the trial court in its equitable powers awards class counsel a
fee out of that fund, the court may determine the amount of a reasonable fee by
choosing an appropriate percentage of the fund created.”

13 (*Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal. 5th, 480, 503.) Explaining its ruling, the Court further
14 held that “[t]he recognized advantages of the percentage method – including relative ease of
15 calculation, alignment of incentives between counsel and the class, a better approximation of market
16 conditions in a contingency case, and the encouragement it provides counsel to seek an early
17 settlement and avoid unnecessarily prolonging litigation – convince us the percentage method is a
18 valuable tool that should not be denied by our trial courts.” (*Id.*, internal citations omitted; see also
19 *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1047.) The Court specifically stated that
20 trial courts “retain the discretion to forgo a lodestar cross-check..” (*Laffitte* at p. 506.) Indeed, several
21 courts have expressed frustration with the alternative “lodestar” approach for deciding fees, which
22 usually involves wading through voluminous and often indecipherable time records. (See, e.g., *In re*
23 *Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375.) The percentage approach
24 is preferable to the lodestar because it: (1) provides predictability to class counsel and class members;
25 (2) encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable
26 settlement; and (3) reduces the demands on judicial records. (*Id.* at pp. 1378-79.) In fact:

27 A task force commissioned by the Third Circuit concluded that the lodestar approach (1)
28 increases the workload of an already overtaxed judicial system, (2) is insufficiently

1 objective and produces results that are far from homogenous, (3) creates a sense of
2 mathematical precision that is unwarranted in terms of the realities of the practice of law,
3 (4) is subject to manipulation by judges who prefer to calibrate fees in terms of percentages
4 of the settlement fund or the amounts recovered by the Claimants or of an overall dollar
5 amount, (5) encourages lawyers to spend excessive hours, and engage in duplicative and
6 unjustified work, (6) creates a disincentive for the early settlement of cases, (7) deprives
7 trial courts of flexibility to reward or deter lawyers so that desirable objectives, such as
8 early settlement, will be fostered, (8) works to the particular disadvantage of the public
interest bar, and (9) results in confusion and lack of predictability. Due to these perceived
deficiencies, the Report of the Third Circuit Task Force concluded that the lodestar
technique is a cumbersome, enervating, and often surrealistic process of preparing and
evaluating fee petitions that now plagues the Bench and Bar and recommended a return to
the percentage of the recovery fee formula in cases involving a settlement fund.

9 (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 28, citations and quotation marks
10 omitted.) In *Lealao*, the Court of Appeal considered counsel's efficiency and skill in bringing the case
11 to early resolution: "[T]he promptness of settlement cannot be used to justify the refusal to apply a
12 multiplier to reflect the size of the class recovery without exacerbating the disincentive to settle
13 promptly inherent in the lodestar methodology. Considering that our Supreme Court has placed an
14 extraordinarily high value on settlement . . . *it would seem counsel should be rewarded, not punished,*
15 *for helping to achieve that goal....*" (*Lealao* at p. 52, citations omitted, emphasis added.) Newberg
16 notes that achievement of a substantial recovery with modest hours expended should not be penalized,
17 but should be rewarded for considerations of time saved by superior services performed. (Newberg on
18 Class Actions, 4th Ed. 2002, § 14:6.) Moreover, courts should not only consider the size of the class
19 or the amount of the recovery as a whole; it should also examine the size of the individual settlement
20 amount of each class member as an indication of counsel's contribution to the case. (*Lealao* at p. 53.)

21 Based on this rationale, the California Supreme Court in *Laffite* affirmed a fee award
22 representing one-third of the fund and rejected the objections of putative class members to this award.
23 (*Laffite*, 1 Cal.5th at p. 506.) Further, this was based on a lodestar amount that required a multiplier
24 of 2.13. (*Id.* at p. 487). As the Court held, only when the multiplier is "extraordinarily high or low
25 [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the
26 imputed multiplier within a justifiable range." (*Id.* at p. 505.) Moreover, in the *Laffite* intermediate
27 court decision, the Court of Appeal observed that "33 1/3 percent of the common fund is consistent
28

1 with, and in the range of, awards in other class action lawsuits.” (*Laffitte v. Robert Half Int’l., Inc.*
2 (2014) 231 Cal.App.4th 860, 871.)

3 Pursuant to the numerous cases cited above and below, including this Court’s own rulings,
4 Plaintiff respectfully requests that the Court apply *Laffitte* and award one-third of the common
5 fund. As discussed below, Plaintiff and her counsel assumed all of the risks in working on this
6 case on a contingency basis. Moreover, in prosecuting this action diligently and efficiently, Class
7 Counsel has created an ascertainable fund from which reasonable attorneys’ fees can be easily
8 calculated and awarded. The Settlement creates a Maximum Settlement Amount of **\$207,372.39**
9 that will substantially benefit the Class.

10 **B. An Award of Attorneys’ Fees to Class Counsel of One-Third of the Maximum Settlement**
11 **Amount is Reasonable and Should Be Approved.**

12 Plaintiff seeks an attorneys’ fee award of one-third of the Maximum Settlement Amount, or
13 **\$69,124**. This requested fee award should be approved because: (1) it is consistent with recent Federal
14 and California court awards in similar wage and hour class settlements; (2) the Class has responded
15 positively to the requested award; (3) it is reasonable in light of the substantial monetary benefits
16 conferred on the Class; and (4) it achieves the dual purposes of a common fund award by spreading
17 the litigation costs among those who benefited from the settlement while rewarding and encouraging
18 competent counsel to handle complex, contingency, class action cases like this. The Court should
19 confirm its preliminary approval of this fee award.

20 **1. The Requested Fee is Supported by Awards in Similar Cases.**

21 A review of California cases “reveals that courts usually award attorneys’ fees in the 30-40%
22 range in wage and hour class actions that result in recovery of a common fund under \$10 million.”
23 (*Cicero v. DirecTV, Inc.* (C.D. Cal. 2010) 2010 U.S. Dist. Lexis 86920 at *17.) These smaller class
24 actions frequently involve fee awards in the range of one-third because they do not implicate
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1 “megafunds” where a smaller percentage recovery is more appropriate. (See *Vandervort v. Balboa*
2 *Capital Corp* (C.D. Cal. 2014) 8 F.Supp.3d 1200, 1209-10.³)

3 In smaller wage-hour class actions like this one, federal courts seated in California routinely
4 award attorneys’ fees of percentages equal to or greater than that sought by Plaintiff in this action.⁴
5 The same is true of California State courts, including this one.⁵ When viewed in the light of the
6 foregoing authorities, the reasonableness of Plaintiffs’ requested fee award of one-third is reaffirmed.

8 ³ “Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in
9 class actions average around one-third of the recovery.” *Chavez*, 162 Cal.App.4th 43, 66 n.11 (quoting *Shaw v. Toshiba*
10 *Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000); see also *Knight v. Red Door Salons, Inc.*, No. 08-01520
SC, 2009 WL 248367, at *6 (N.D. Cal. 2009) (“fee awards in class actions average around one-third of the recovery”)
(quoting Newberg on Class Actions § 14.6 (4th ed. 2007)).

11 ⁴ See, e.g., *Wren v. RGIS Inventory Specialists* No. C-06-05778, JCS, 2011 WL 1230826, at *29 (N.D. Cal. Apr. 1, 2011)
(approving fee award that constituted 42% of the common fund in wage and hour class and collective action); *Boyd*,
12 2014 WL 6473804, at *8-*12 (awarding one-third of settlement in wage and hour case on behalf of real estate review
appraisers); *Birch v. Office Depot, Inc.* Case No. 06cv1690 DMS, at *13 (S.D. Cal. Sept. 28, 2007) (awarding a 40% fee
13 on a \$16,000,000 wage and hour class action settlement); *Stuart v. Radioshack Corp.*, No. C-07-4499 EMC, 2010 WL
3155645 at *5-*7 (N.D. Cal. Aug. 9, 2010) (awarding one-third of \$4.5 million settlement fund as fees in class case
alleging failure to reimburse employees for expenses); *Quezada v. Con-Way Freight, Inc.*, No. 09-cv-3670, at ¶ 9 (N.D.
14 Cal. Jan. 15, 2015) (awarding one-third of \$2 million settlement fund as fees in class case alleging failure to pay wages
for all hours worked); *Singer v. Becton Dickinson and Co.*, No. 08-CV-821-IEG (BLM) 2010 WL 2196104, at *8 (S.D.
15 Cal. Jun. 1, 2010) (approving fee award of 1/3 of the common fund; award was similar to awards in three other cited
wage and hour class action cases where fees ranged from 30% to 40%); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal.
16 2010) 266 F.R.D. 482, 491-92 (citing five recent wage and hour class actions where federal district courts approved
attorney fee awards ranging from 30% to 33%); *Cicero*, 2010 WL 2991486, at *6 (noting that fees of one-third are
17 common in wage and hour settlements below \$10 million, citing cases); *Rieve v. Coventry Healthcare Inc.* (C.D. Cal.
Aug. 8, 2014) No. 11-cv-1032-DOC, at ¶ 7 (awarding one-third of \$3 million settlement fund as attorneys’ fees in wage
& hour class settlement).

18 ⁵ See, e.g., *Contreras v. Bank of Am., N.A.* (S.F. Cnty. Super. Ct. Sept. 3, 2010) No. CGC-07-467749 (fee award of one-
third of \$16,650,000 fund in wage and hour settlement); *Barrett v. The St. John Cos.* (L.A. Cnty. Super. Ct. July 9, 2009)
19 No. BC354278 (33½% award of \$1.1 million settlement in wage and hour class action); *Case, et al. v. Toyohara Am.*
Inc. (L.A. Cnty. Super. Ct. May 31, 2006) No. BC328111 (same); *Marroquin v. Bed Bath & Beyond* (Alameda Cnty.
20 Super. Ct. June 22, 2004) No. RG04145918 (same); *Crandall v. UHaul Int’l, Inc.* (L.A. Cnty. Super. Ct. Aug. 17, 2001)
No. BC178775 (40% award in wage and hour class action); *Tokar v. GEICO* (San Diego Cnty. Super. Ct. July 9, 2004)
21 No. GIC 810166 (approving award of attorney’s fees of 33-1/3% of recovery); *Davis v. The Money Store, Inc.*
(Sacramento Cnty. Super. Ct. Decl. 26, 2000) No. 99AS01716 (33-1/3% of \$6,000,000 settlement); *Big Lots Overtime*
Cases, (San Bernardino Cnty. Super. Ct., JCC Proceeding No. 4283, Feb. 4, 2004) (33% fee recovery); See, e.g.,
22 *Contreras v. Bank of Am., N.A.* (S.F. Cnty. Super. Ct. Sept. 3, 2010) No. CGC-07-467749 (fee award of one-third of
\$16,650,000 fund in wage and hour settlement); *Barrett v. The St. John Cos.* (L.A. Cnty. Super. Ct. July 9, 2009) No.
23 BC354278 (33½% award of \$1.1 million settlement in wage and hour class action); *Case, et al. v. Toyohara Am. Inc.*
(L.A. Cnty. Super. Ct. May 31, 2006) No. BC328111 (same); *Marroquin v. Bed Bath & Beyond* (Alameda Cnty. Super.
24 Ct. June 22, 2004) No. RG04145918 (same); *Crandall v. UHaul Int’l, Inc.* (L.A. Cnty. Super. Ct. Aug. 17, 2001) No.
BC178775 (40% award in wage and hour class action); *Tokar v. GEICO* (San Diego Cnty. Super. Ct. July 9, 2004) No.
25 GIC 810166 (approving award of attorney’s fees of 33-1/3% of recovery); *Davis v. The Money Store, Inc.* (Sacramento
Cnty. Super. Ct. Decl. 26, 2000) No. 99AS01716 (33-1/3% of \$6,000,000 settlement); *Big Lots Overtime Cases*, (San
26 Bernardino Cnty. Super. Ct., JCC Proceeding No. 4283, Feb. 4, 2004) (33% fee recovery); *Mettler, Bender, and Rojas v.*
Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court Case No. STK-CV-UOE-2018-476,
27 Order Granting Plaintiffs’ Motion for Approval of Class Action Settlement, July 23, 2019 (approving fee request of one-
third of the common fund); *Escalera v. La Tapatia Mexican Restaurant, Inc.*, San Joaquin County Superior Court, July
28 12, 2019, Case No. STK-VJ-UOE-2017-5296, Order on Motion for Final Approval of Class Action Settlement and

1 **2. The Overwhelmingly Positive Reaction of the Class Supports Approval.**

2 It is well settled that positive reactions by class members favor settlement approval. (*7-Eleven*
3 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53.) Thus, the
4 absence of disapproval constitutes strong evidence in support of the reasonableness of the requested
5 fee and cost award. (*See In re Heritage Bond Litig.* (C.D. Cal. 2005) 2005 WL 1594403 at * 21 [“The
6 absence of objections or disapproval by class members to Class Counsel’s fee request further support
7 finding the fee request reasonable”].) Here, after having received notice of the terms of the Settlement
8 Agreement, ***not one of the 98 Class Members has objected to the requested attorneys’ fees and costs***
9 ***award, nor have any Class Members even opted out of the Settlement.*** (Admin. Dec. ¶¶ 11, 12.)
10 This reaction indicates the Class’s acceptance of the proposed fee award and further underscores its
11 reasonableness.

12 **3. An Award of One-Third Settlement Amount Is Fair and Reasonable in Light of the**
13 **Substantial Monetary Benefits Obtained for the Class and the Risks Faced by Class**
14 **Counsel.**

15 In addition to these equity and market considerations, courts also look to the following factors
16 to assess the reasonableness of a common fund award: (1) the results achieved, particularly whether
17 counsel obtained benefits for the Class above and beyond the cash settlement fund, such as causing the
18 employer to make changes to its policies; (2) the riskiness of prosecuting the litigation; (3) the skill
19 and high quality of work by counsel; and (4) the financial burden carried by Class Counsel in
20 prosecuting the case on a contingency basis. (*Serrano v. Priest* (1977) 20 Cal. 3d 25, 49; *Lealao v.*
21 *Beneficial California, Inc.*, 82 Cal. App. 4th 19, 26; *see also Vizcaino*, 290 F.3d at 1048-50 [internal
22 quotation and citation omitted].) As discussed below, all of these factors justify Plaintiff’s fee request.
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27 Motion for Attorneys’ Fees, Costs, and Class Representative Payment, (approving fee request of one-third of the
28 common fund); *Grady and Duran v. People 2.0 dba The Hire Source, et al.*, San Joaquin County Superior Court Case
No. STK-CV-UOE-2017-13867, Order Granting Plaintiff’s Motion for Final Approval of Class Action Settlement, May
29, 2019, (approving fee request of one-third of the common fund).

1 **a. The fee request is justified by the positive results achieved.**

2 The ultimate reasonableness of the fee “is determined primarily by reference to the level of
3 success achieved by the plaintiff.” *McCown v. City of Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2009).
4 Here, Class Counsel achieved an excellent result and obtained significant monetary relief for the Class,
5 which justifies the requested fee award. Participating Class Members (i.e., Class Members who did not
6 opt-out) will receive a share of the Net Settlement Amount (almost \$96,000, even after subtracting the
7 Class Representative Enhancement Award, fees and costs of class counsel, costs of administration, and
8 the payments to the PAGA Group and the LWDA). ***The average payment to each Participating Class***
9 ***Member will be approximately \$488.51, with the largest payment being approximately \$2,669.61.***
10 (Admin Dec. ¶ 16.)

11 This recovery represents substantial monetary relief for the Class given the complexity of the
12 issues, the risk and uncertainty inherent in class action litigation, and the myriad factual and legal
13 defenses advanced by Defendants. (Briscoe Decl., ¶¶ 11-17.) Under these circumstances, a fee award of
14 one-third of the Maximum Settlement Amount, or \$69,124, is reasonable and appropriate.

15 **b. The risks associated with this litigation justify the fee request.**

16 Class counsel has taken considerable risk in litigating this case—not just because it was done
17 on a wholly contingency basis (as discussed below) but also because complex, representative wage-
18 and-hour litigation is an ever-emerging area under the law. As set forth in greater detail in Plaintiff’s
19 Motion for Final Approval, recovery is far from guaranteed and could only occur after *additional*
20 years of costly litigation that is rife with risk. Defendants asserted and would have continued to assert,
21 through certification, trial and the appellate process, numerous factual and legal defenses. Plaintiff
22 faced the all-too-acute risk that she would not obtain a maximum damage/penalty award on all (or any
23 of) her claims. Absent settlement, Class Counsel anticipates a vigorous and lengthy challenge to both
24 class certification and the merits of the Class Action. While Class Counsel remains confident that
25 certification and ultimate victory would be attained, continued litigation is guaranteed to be costly,
26 time consuming and uncertain. Appellate proceedings would only further delay and jeopardize
27 recovery by Class Members. As such, these litigation risks further justify the sought fees award.
28 (Briscoe Decl., ¶¶ 11-17.)

1 **c. Class Counsel’s skill and the quality of their work justifies the fee request.**

2 Class counsel has demonstrated substantial skill, diligence, and high quality of work in
3 litigating the case (over a nearly four-year period), achieving the proposed Settlement, and creating a
4 Maximum Settlement Amount of \$207,372.39. The Settlement, and the substantial monetary benefits
5 it conveyed upon the Settlement Class, was obtained efficiently and effectively without wasted effort
6 or years of needless, costly litigation. As a result of the skill and tremendous effort of Class Counsel,
7 Plaintiff was well-positioned to reach a favorable settlement for the Class, which itself required
8 significant expertise and protracted, at times contentious, negotiations to achieve. (See, generally,
9 Briscoe Decl.)

10 **d. The contingent nature of the fee and financial burden carried by class counsel**
11 **justifies the fee request.**

12 A law firm that prosecutes class action cases does not get paid in every case. Sometimes, it
13 gets nothing or is awarded fees equal to only a small percentage of the amount it actually had worked.
14 Where plaintiffs’ counsel does succeed, therefore, it is appropriate to compensate the firm for the risks
15 the firm regularly undertakes. As the California Supreme Court has explained:

16 “[A] contingent fee must be higher than a fee for the same legal services paid as
17 they are performed. The contingent fee compensates the lawyer not only for the
18 legal services he renders but for the loan of those services. The implicit interest rate
19 on such a loan is higher because the risk of default (the loss of the case, which
20 cancels the debt of the client to the lawyer) is much higher than that of conventional
21 loans. A lawyer who both bears the risk of not being paid and provides legal
22 services is not receiving the fair market value of his work if he is paid only for the
23 second of these functions. If he is paid no more, competent counsel will be
24 reluctant to accept fee award cases.”

25 (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33, internal citation and quotation omitted.)

26 Accordingly, courts have recognized that “[i]t is an established practice in the private legal market to
27 reward attorneys for taking the risk of non-payment by paying them a premium over their normal
28 hourly rates for winning contingency cases.” (*Fischel v. Equitable Life Assurance Soc’y of U.S.* (9th
Cir. 2002) 307 F.3d 997, 1008.)

 In this case, Class Counsel have worked diligently on this case since 2020, and in effect have
loaned their legal services to the entire Class since that time. Class Counsel have prosecuted this case

1 on a wholly contingent basis, and have done so at great risk of never receiving any compensation due
2 to the risky nature of class action litigation in general, and also due to the numerous factual and legal
3 defenses of Defendant. Class Counsel took a tremendous risk by taking on this case and persevered to
4 attain the Settlement on behalf of the Class. To date Class Counsel has spent \$8,679.67 in costs and
5 expended *approximately 236 hours of work*, with significant work remaining to be done, without
6 receiving any compensation at all. Meanwhile, all of this entailed passing on other lucrative cases.
7 (Briscoe Decl., ¶¶ 24-34.)

8 **4. The Requested Fee Award Fairly Spreads the Litigation Costs Among the Settlement**
9 **Beneficiaries.**

10 The percentage-of-the-fund approach is an appropriate method for reviewing attorneys' fees
11 here because it allows Plaintiff and Class Counsel to create "a fund from which others will benefit
12 [and] to require those other beneficiaries to bear their fair share of the litigation costs." (*Nw. Energetic*
13 *Servs., LLC v. Cal. Franchise Tax Bd.* (2008) 159 Cal. App. 4th 841, 87 [citing *Serrano, supra*, 20
14 Cal. 3d at p. 35.]) This approach ensures that the class members, who have accepted the benefits from
15 a common fund recovery, also accept their fair *pro rata* responsibility to contribute towards the
16 attorneys' fees and costs that created the fund in the first place. (*Earley v. Super. Ct.* (2000) 79 Cal.
17 App. 4th 1420, 1436.) In other words, "[t]hose who benefit from the creation of the fund should share
18 the wealth with the lawyers whose skill and effort helped create it." (*In re Wash. Pub. Power Supply*
19 *Sys. Sec. Litig.* (9th Cir. 1994) 19 F.3d 1291, 1300.)

20 Based on the above principles, the attorneys' fees to be awarded are to be calculated based on a
21 percentage of the entire settlement fund. (*Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ; *Six*
22 *(6) Mexican Workers v. Arizona Citrus Growers* (9th Cir. 1990) 904 F.2d 1301, 1311.) Accordingly,
23 the percentage-of-the-fund approach is appropriate here and supports Class Counsel's request for an
24 award of a percentage of the common fund (i.e., one-third of the \$400,000 Maximum Settlement
25 Amount).

26 In addition to spreading the litigation costs among all the beneficiaries, awards of common
27 fund fees are essential to furthering the important societal goal of attracting competent counsel to
28 handle these often-complex contingency cases, "who will be more willing to undertake and diligently

1 prosecute proper litigation for the protection or recovery of the fund if [attorneys are] assured that
2 [they] will be promptly and directly compensated should [their] efforts be successful.” (*Melendres v.*
3 *City of Los Angeles* (1975) 45 Cal.App.3d 267, 273.) “Given the unique reliance of our legal system
4 on private litigants to enforce substantive provisions of law through class and derivative actions,
5 attorneys providing the essential enforcement services must be provided incentives roughly
6 comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it
7 will otherwise be economic for defendants to increase injurious behavior.” (*Lealao, supra*, 82 Cal.
8 App. 4th at 47.) Without such incentives, meritorious class actions such as this would not be brought
9 and thus the private enforcement of important statutory rights would be undermined.

10 California courts further recognize “the amount of attorney fees typically negotiated in
11 comparable litigation should be considered in the assessment of a reasonable fee in representative
12 actions in which a fee agreement is impossible.” (*Lealao, supra*, 82 Cal.App.4th at p. 47.) By doing
13 so, courts can ensure that the awarded fee approximates the legal marketplace by being comparable to
14 what clients and counsel would have likely negotiated at the outset of the matter. Notably, the typical
15 contingency fee contract ranges from 20 to 40 percent of the total recovery—leaving Plaintiff’s
16 requested attorneys’ fee roughly in the middle of the spectrum. (*Chavez v. Netflix, Inc.* (2008) 162
17 Cal. App. 4th 43, 64-65.)

18 Here, Plaintiff’s requested fee award constitutes a fair charge in light of the substantial relief,
19 monetary and otherwise, obtained for the Class. Because each Class Member will receive a share of
20 the Maximum Settlement Amount, equity requires that they also contribute to the attorneys’ fees that
21 netted them this positive result. Moreover, the requested fee—one-third of the common fund—is
22 equal to or less than 1) typical fees awarded in small wage and hour class actions like this one, 2) most
23 contingency fee retainer agreements, and 3) the fee that Class Counsel would have expected if they
24 had negotiated individual retainer agreements with each Class Member. (See *Chavez, supra*, 162 Cal.
25 App. 4th at 64-65; see also *Briscoe Decl.*, ¶ 27.) Thus, the requested award ensures that Class Counsel
26 receive an appropriate fee award for the actual benefit conferred to the Class, particularly where it
27 would be impossible *ex ante* to enter a fair fee arrangement with all the members of the Class.

1 **5. The Lodestar Cross-Check Further Confirms the Reasonableness of the Requested**
2 **Fee Award.**

3 The California Supreme Court has held that trial courts have discretion to award fees as a
4 percentage of the common fund, with or without conducting a lodestar cross-check. (*Laffitte, supra*,
5 1 Cal. 5th at p. 506 [“We further hold that trial courts have discretion to forgo a lodestar cross-check
6 and use other means to evaluate the reasonableness of a requested percentage fee”].) Although not
7 required, courts asked to approve fee awards on a common fund percentage basis may perform a
8 “lodestar cross-check” as a means of determining whether the requested percentage is reasonable in
9 relation to the amount and value of the time expended by counsel. (*See Lealao, supra*, 82
10 Cal.App.4th at pp. 47-50.) The goal under either the percentage or lodestar approach being the award
11 of a reasonable fee to compensate counsel for their efforts.⁶ (*Laffitte* at p. 504.)

12 This cross-check starts with the basic lodestar calculation but may then “evaluate the lodestar
13 as a percentage of the recovery and adjust it accordingly if it can be determined that the lodestar is
14 significantly different from the range of percentage fees freely negotiated in comparable litigation.”
15 (*Lealao, supra*, 82 Cal.App.4th at p. 50.) Under the first step of the cross-check, the “lodestar” figure
16 is calculated by multiplying “the number of hours [the prevailing party] reasonably expended on the
17 litigation [] by a reasonable hourly rate.” (*See Hensley v. Eckerhart* (1983) 461 U.S. 424, 433 ;
18 *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322.)

19 ***Class Counsel, to date, has expended approximately 237 hours to bring this settlement to***
20 ***the brink of finalization.*** These hours reflect time reasonably spent litigating this case, which Class
21 Counsel sought to efficiently manage, staff, assign, and divide the work amongst themselves to avoid
22 duplication of effort. (Briscoe Decl., ¶ 31, Exhibit E.) Class Counsel will also spend significant
23

24 ⁶ The common fund method is a better fit for this situation due to the creation of the Maximum Settlement Amount to
25 benefit the Class and its encouragement of better incentives regarding attorney billing practices that actually serve a
26 plaintiff class. Courts have also acknowledged the merits of awarding attorneys’ fees under the common fund approach
27 “[b]ecause the benefit to the class is easily quantified in common-fund settlements” and it avoids the “often more time-
28 consuming task of calculating the lodestar.” (*In re Bluetooth v. Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935,
942; *Staton v. Boeing Co.* (9th Cir. 2003); see also *Elliot v. Rolling Frito-Lay Sales, LP* (C.D. Cal. June 12, 2014) 2014
WL 2761316 at *9 (“There are significant benefits to the percentage approach, including consistency with contingency
fee calculations in the private market, aligning the lawyers’ interests with achieving the highest award for the class
members, and reducing the burden on the courts that a complex lodestar calculation requires”).)

1 additional time responding to Class Member inquiries, attending the Final Approval Hearing,
2 overseeing the administration of the Settlement, reporting to the Court, and attending a Final
3 Compliance Hearing. (*Id.* at ¶ 33.) Class Counsel’s customary hourly rate in plaintiff’s employment
4 class action cases is, for both Messrs. Briscoe and Wassermann (with thirteen and fifteen years’
5 experience practicing law, respectively) is \$878, and is commensurate with the rates of practitioners
6 with similar experience in plaintiffs’ wage-and-hour class actions within the California legal market,
7 and have also been approved by numerous federal and state courts across the state.^{7, 8} (*Id.* at ¶ 30.)
8 Applying the appropriate hourly rates to the number of hours worked yields a lodestar of
9 **\$207,594.30.** (*Id.* at ¶ 31.) This reasonable lodestar is supported by detailed and contemporaneous
10 billing records maintained by Class Counsel. Summaries of these billing records are attached to and
11 described in Class Counsels’ declarations for the Court’s review. (*Id.* at ¶¶ 24-31; Exhibit E.)

12 Under the second step of the analysis, the reasonableness of the requested fee award is
13 confirmed by the application of a modest multiplier. In wage and hour actions, California and Ninth
14 Circuit courts both approve reasonable multipliers on the class counsel’s lodestar, which range from 2
15 to 4 times, to reward counsel for accepting the contingent risk of the litigation or obtaining excellent
16 results. (*See, e.g., Laffitte v. Robert Half International, Inc.*, 1 Cal. 5th at 506 (approving one-third fee
17 award with multiplier between 2.03 and 2.13); *see also Wershba*, 91 Cal. App. 4th at 255 (noting that
18 multipliers can range from 2 to 4 or higher); *Contreras v. Bank of Am., N.A.* (S.F. Cnty. Super. Ct.
19 Sept. 3, 2010) No. CGC-07-467749 (approving one-third of common fund fee award, which was 2.73
20 multiplier of lodestar); *Van Vranken v. Atlantic Richfield Co.*, 901 F.Sup. 294, 298 (N.D. Cal. 1995)
21 (“Multipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action
22
23

24 ⁷These rates are based upon the 2018-2019 Adjusted Laffey Matrix for the District of Columbia, a matrix that has been
25 used by California district courts in determining reasonable hourly rates. *Chanel, Inc. v. Doan*, 2007 U.S. Dist. LEXIS
26 22691, *17-18 (N.D. Cal. Mar. 13, 2007); *Garnes v. Barnhardt*, 2006 U.S. Dist. LEXIS 5938, *18-19 (N.D. Cal. Jan. 31,
2006); *Viveros v. Donahoe*, 2013 U.S. Dist. LEXIS 46867, *15-22 (C.D. Cal. Mar. 27, 2013); *Langer v. Dodaiton*, 2015
27 U.S. Dist. LEXIS 64805, *36-37 (C.D. Cal. May 18, 2015).

28 ⁸ Calculating the lodestar using Class’s Counsel’s current rates is appropriate given the deferred nature of counsel’s
compensation. *See LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2nd Cir. 1998) (“[C]urrent rates, rather than
historical rates, should be applied in order to compensate for the delay in payment”) (citing *Missouri v. Jenkins*, 491
U.S. 274, 283-84 (1989)); *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994)).

litigation”).⁹) Yet, no multiplier is necessary in this case, as the lodestar exceeds the sought award, nearly threefold.

C. Class Counsel’s Out-of-Pocket Expenses Are Reasonable and Compensable From the Common Fund.

The Settlement allows Class Counsel to request reimbursement for the out-of-pocket expenses they incurred during this litigation in the reasonable amount of no more than \$10,000. Reimbursement for these expenses is appropriate for the same reason attorneys’ fees should be paid out of the fund: all beneficiaries should bear their fair share of the costs of the litigation, and these are the normal costs of litigation that counsel traditionally bill their paying clients. (See *Serrano*, *supra*, 20 Cal. 3d at 35 (common fund doctrine permits class counsel to recover attorneys’ fees and costs from the fund as a whole); *Rider v. County of San Diego* (1992) 11 Cal. App. 4th 1410, 1423, n.6 [costs are recoverable from the common fund “[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of attorney fees”]; *Earley*, *supra*, 79 Cal. App. 4th at 1436; see also *Harris v. Marhoefer* (9th Cir. 2004) 24 F.3d 16, 19.)

To date, Class Counsel have incurred **\$8,679.67** in actual out-of-pocket expenses. (Briscoe Decl., ¶ 34, Exhibit E.) The costs to be reimbursed are routinely reimbursed litigation costs that are typically charged to fee-paying clients, including filing fees, jury fees, FedEx fees, etc. (*Id.*; see also *Harris*, *supra*, 24 F.3d at 19 (holding that attorneys may recover reasonable expenses that would typically be billed to paying clients in non-contingency cases).) Substantial costs were also expended in securing the services of an excellent mediator with the knowledge and skills to mediate a 98-person employment class and representative action. (*Id.*) Furthermore, Class Counsel expects to incur additional costs before this case is closed following a Final Compliance Hearing. (Briscoe Decl., ¶ 34.)

⁹ See also, *Vizcaino*, 290 F.3d at 1051 & n.6 (affirming lodestar multiplier of 3.65 in light of complexity and risk of case and surveying 34 class common fund settlements to find that 83% of multipliers were in the 1 to 4 range); *Vandervort*, 8 F.Supp.3d at 1210 (awarding one-third of fund, which was 2.52 multiplier of lodestar); *Boyd*, 2014 WL 6473804, at *11 (awarding one-third of fund, which was 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the “majority” range for risk multipliers); *Buckingham, et. al. v. Bank of America*, United States District Court, Northern District, Case No. 3:15-cv-06344-RS, Docket No. 103 (approving lodestar multiplier of 5.31).

1 These costs were (and will be) necessarily incurred, are reasonable in relation to the size and scope of
2 the case, and Class Counsel should be reimbursed for them.

3 **D. The Class Representative Enhancement Award to Plaintiff is Reasonable.**

4 The Court should also approve the \$5,000 Class Representative Enhancement Award to
5 Plaintiff because it is just, fair, and reasonable. Courts regularly approve incentive awards for class
6 representatives to “be compensated for the expense or risk they have incurred in conferring a benefit
7 on other members of the class.” (*In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th
8 1380, 1394 [quoting *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal. App. 4th 785, 806]; *see also*
9 *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 [upholding Class Representative
10 Enhancement Awards to class representatives]; *Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010)
11 186 Cal. App. 4th 399, 412 [upholding incentive awards to plaintiffs].)

12 In deciding whether to approve an incentive award, a court should consider: “(1) the risk to the
13 class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal
14 difficulty encountered by the class representative; (3) the amount of time and effort spent by the class
15 representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed
16 by the class representative as a result of the litigation.” (*In re Cellphone Fee Termination Cases*,
17 *supra*, 186 Cal.App.4th at 1394-95 [internal quotation marks omitted]; *see also Van Vranken v.*
18 *Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299 [applying similar factors to determine
19 reasonableness of Class Representative Enhancement Awards].)

20 All of the aforementioned factors support the Class Representative Enhancement Awards
21 requested here. The Class Representative Enhancement Award sought by Plaintiff is (a) in line with
22 the Ninth Circuit benchmark, (b), only 2.4 percent of the \$207,372.39 Maximum Settlement Amount,
23 and (c) fair, reasonable and appropriate under the circumstances of this case. Here, Plaintiff took on
24 substantial risk in bringing this class action and exposed himself to notoriety and personal difficulties
25 from serving as the named plaintiff. First, Plaintiff bore the significant financial risk of Defendant’s
26 costs in the event he lost at trial. This financial risk, in a complex employment class action involving
27 98 current and former employees, could *easily* total tens, if not hundreds of thousands of dollars.
28 Those risks also included, but were not limited to, damage to her professional reputation. It is well-

1 established that plaintiffs in the employment context “face[] the risk that new employers would learn
2 that they were class representatives in a lawsuit against their former employer and take adverse action
3 against them. Moreover, each time they change jobs, they will risk retaliation in the hiring process.”
4 (*Asare v. Change Grp. of N.Y., Inc.* (S.D.N.Y. Nov. 18, 2013) No. 12 Civ. 3371(CM), 2013 WL
5 6144764, at *15.) This danger is heightened in this case, where the first hit on a Google search for
6 “Juan Caamal class action” reveals that Plaintiff has brought a wage-and-hour class action against his
7 former employers. (Briscoe Decl., ¶ 36, Exhibit F.) Furthermore, Plaintiff, who worked diligently with
8 Class Counsel throughout this entire (and lengthy) litigation, including taking numerous calls,
9 exchanging endless emails, and meeting with Class Counsel to discuss the case, and attending a
10 lengthy mediation, should be rewarded for taking the initiative to pursue these claims on behalf of his
11 coworkers, and for her role in reaching a substantial settlement providing for valuable relief to the
12 Class. Plaintiff’s commitment is further underscored by the fact that, had the Settlement not been
13 reached, his participation may well have been required for several more years. Additionally, Plaintiff
14 receives no special treatment under the terms of the Settlement and is entitled to only to his
15 proportional share of the Net Settlement Amount. Moreover, by actively pursuing this action, Plaintiff
16 has furthered the twin California public policy goals of enforcing the Labor Code and making
17 appropriate use of the class action device. (*See Sav-on Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal.
18 4th 319, 340.) In light of the foregoing, Plaintiff should be rewarded for taking the initiative to pursue
19 these claims on behalf of his coworkers, and for his role in reaching a substantial settlement providing
20 for valuable relief to the Class, and for the risks assumed in doing so.

21 The reasonableness of the requested Class Representative Enhancement Award is further
22 confirmed by the fact that it constitutes just 2.4 percent of the Maximum Settlement Amount.
23 Critically, ***not one Class Member has objected to the requested Class Representative Enhancement***
24 ***Award after receiving notice of the same, and Defendants do not oppose it either.*** (The requested
25 Award is now an even smaller portion of the Maximum Settlement Amount, as Tiburon Lodge’s
26 escalator clause has been invoked and the Maximum Settlement Amount increased by over \$22,000.)
27
28

1 The requested Class Representative Enhancement Award is also consistent with awards approved by
2 courts in other similar wage and hour cases.¹⁰

3 Plaintiff's requested Class Representative Enhancement Award is warranted in light of the
4 commendable result obtained, the considerable time spent prosecuting this case, and their exposure to
5 personal backlash. Accordingly, all of the aforementioned factors support the approval of the \$5,000
6 Class Representative Enhancement Award.

7 **IV. CONCLUSION**

8 For the foregoing reasons, the Court should grant final approval to the Parties' proposed class
9 action Settlement, award attorneys' fees in the amount of \$69,124, costs of \$8,679.67, administration
10 fees of \$9,000, and a Class Representative Enhancement Award of \$5,000 to Plaintiff for his service as
11 Class Representative in this matter.

12 ///

13 **DATED:** March 15, 2024

MAYALL HURLEY P.C.

14 By 

15 ROBERT J. WASSERMANN
16 JOHN P. BRISCOE
17 Attorneys for Plaintiff
18 JUAN CAAMAL and the Class
19
20
21
22

23 ¹⁰ See e.g. *Bond v. Ferguson Enterprises, Inc.*, No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30,
24 2011) (approving \$11,250 service award each to two class representatives in a meal break class action); *Vasquez v. Coast*
25 *Valley Roofing, Inc.*, 266 F.R.D. 482, 493 (E.D. Cal. 2010) (**approving service awards of \$10,000 each from a \$300,000**
26 **settlement in a wage and hour class action**); *Castellanos v. Pepsi Bottling Group, Inc.*, No. RG07332684 (Alameda
27 Cnty. Super. Ct., March 11, 2010) (approving incentive award of \$12,500 in a wage and hour class action); *West v.*
28 *Circle K Stores, Inc.*, No. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 (E.D. Cal. Oct. 19, 2006)
("the court finds plaintiffs' enhancement payments of \$15,000 each to be reasonable."); *Louie v. Kaiser Found. Health*
Plan, Inc., No. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (S.D. Cal. Oct. 6, 2008) (approving "\$25,000
incentive award for each Class Representative" in wage an hour settlement); *Garner v. State Farm Mut. Auto. Ins. Co.*,
No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) ("Numerous courts in the Ninth
Circuit and elsewhere have approved incentive awards of \$20,000 or more where, as here, the class representative has
demonstrated a strong commitment to the class").

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is 112 S. Church Street, Lodi, California 95240 that is located in the county where the mailing and/or delivery below took place.

On March 15, 2024, I served the following document:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FEES
AND COSTS OF CLASS COUNSEL, CLASS REPRESENTATIVE ENHANCEMENT AWARD
TO CLASS REPRESENTATIVE, AND COSTS OF ADMINISTRATION**

addressed to:

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☒ **BY EMAIL:** In accordance with Code of Civil Procedure, Section 1010.6, on the date specified below, I caused a copy of the document(s) described above to be sent to the person(s) at the e-mail address(es) listed above. My business e-mail address is lriley@mayallaw.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 15, 2024, at Lodi, California.


LINDSAY RILEY